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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/656,714	09/07/2000	Masaaki Satou	Q60692	2128

7590 10/14/2005
Sughrue Mion Zinn MacPeak & Seas PLLC
2100 Pennsylvania Avenue N W
Washington, DC 20037-3213

EXAMINER

POLLACK, MELVIN H

ART UNIT PAPER NUMBER

2145

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/656,714

Applicant(s)

SATOU, MASA AKI

Examiner

Melvin H. Pollack

Art Unit

2145

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 13-17, 21, 22.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

MHP

Jason Carbone
SPE AU2145

Continuation of 11. does NOT place the application in condition for allowance because: the examiner has determined that that arguments are not persuasive. A quick overview of the arguments is provided below. A more detailed argument will be made in response to an RCE or Notice of Allowability.

Applicant argues that Shobu fails to teach or suggest a notification of non-allowance, i.e. a "don't send" message. Applicant admits that a non-transmittal of data does occur upon failure to receive an accept (CONN) message, but states that there is no "reject all" message. (There is a "reject one channel" message.) The examiner considers the absence of an answer to be an answer, particularly when it comes to the physical implementation and monitoring of a signal. Further, the server's clear recognition of this condition makes the precise trigger arbitrary.

Applicant argues that Takashima does not expressly disclose the usage of data transmission times. Due to the breadth of the claims, data transmission time may mean the current time or a later time to be negotiated. That is, the examiner treats it as the time of the attempted call, which is recorded.

Applicant argues that Gregory does not expressly disclose conducting calling from the client terminal to the server. First, the examiner notes a problem in the combination of steps F and f wherein it is unclear where in the method step f' occurs and further in that it is unclear whether step f' replaces step f or if both transmitting notification and conducting calling will result. As for the quoted area, it clearly shows the server (central server) and the clients (remote processing station), the clients performing downloading of information (fixed parameters) from the server.

Applicant argues that there is insufficient motivation to combine Gregory with other items. Gregory is drawn to the usage of ISDN lines to transmit large amounts of information, and teaches methods of implementing these features. The data to be transmitted constitutes intent of use and is therefore irrelevant to the issue of motivation. Since the network is not specific to the data transmitted, one of ordinary skill in the art would be motivated to look at ISDN methods of all types, regardless of the specific data to be transmitted.